



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0944; FRL-9174-02-R3]

Air Plan Approval; Delaware; Control of Volatile Organic Compound Emissions from Solvent Cleaning and Drying

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. These revisions pertain to the reduction of volatile organic compounds (VOC) emissions from cold solvent cleaning operations. EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0944. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The

telephone number is (215) 814-2030. Ms. Moser can also be reached via electronic mail at Moser.Mallory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 2022 (87 FR 38044), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of a SIP revision that updates the solvent cleaning control requirements based upon the 2012 Ozone Transport Commission (OTC) Model Rule. The SIP revision was submitted by Delaware on October 13, 2021, requesting that EPA incorporate the Department of Natural Resources and Environmental Control's (DNREC's) revisions to Title 7 of Delaware's Administrative Code (7 DE Admin. Code) 1124 Section 33.0 – Solvent Cleaning and Drying into the Delaware SIP (Section 33.0). In response to the NPRM, EPA received one comment on its June 27, 2022, proposed rulemaking, which is addressed below.

II. Summary of SIP Revision and EPA Analysis

The SIP revision consists of an amendment to Section 33.0. Specifically, the amendment updates the solvent cleaning control requirements based upon the 2012 Ozone Transport Commission Model Rule.

The OTC, of which Delaware is a member, is an organization established by Congress under the CAA. Among other things, the OTC develops model rules for the member states to use to reduce the emissions of ground level ozone precursors. In 2001 the OTC released the 2001 Model Rule for Solvent Cleaning, (2001 Model Rule). The 2001 Model Rule is that basis for the version of 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions, Section 33.0- Solvent Cleaning and Drying that were previously approved in the Delaware SIP.¹ After a release of the Control Techniques Guideline (CTG): Industrial Cleaning Solvents by the EPA in 2006, proposing new VOC limits for solvent cleaning, the OTC convened a group of

¹ See 67 FR 70315 (November 22, 2002).

experts that suggested a more stringent model rule than what is provided in the CTG and the 2001 Model Rule. The OTC then developed the 2012 Model Rule for Solvent Degreasing. The provisions set forth in Section 33.0, which is based on the 2012 Model Rule, are more stringent than those previously included in the Delaware SIP and form the basis of the regulation we are approving to include in the Delaware SIP in this rule. For instance, the provisions eliminate an existing exemption by adding provisions that apply to owners or operators of a solvent cleaning machine that uses any volume of solvent containing VOC. The provisions also reduce the solvent VOC concentration from 100 percent to 25 grams per liter of non-VOC solution for most applications.

By removing an applicability exemption and decreasing the allowable solvent VOC concentration, the 2012 model rule is expected to decrease emissions of VOCs. This reduction of VOC emissions from solvent cleaning operations will further reduce the formation of ground-ozone because ground-level ozone is formed through the reaction of VOCs and other compounds in the air in the presence of sunlight. High levels of ground-level ozone can cause or worsen difficulty in breathing, asthma and other serious respiratory problems. In addition to improving public health and the environment, decreased emissions of VOCs, and therefore subsequently ground-level ozone, will contribute to the attainment of the ozone national ambient air quality standard (NAAQS). Delaware is amending its SIP to add Section 33.0.

III. EPA's Response to Comments Received

EPA provided a 30-day review and comment period for this action in the Proposal. The comment period ended on July 27, 2022. EPA received one comment, which is summarized and addressed below.

Comment: The comment requests additional background on the development and interpretation of the "Federal" 2012 OTC model rule in the context of the commenter seeking advice with regard to acquiring a piece of equipment. In addition, the commenter claims there could be an economic impact to businesses if affected devices cannot efficiently operate at the 25

grams per liter criteria set forth in the rule. The commenter speculates using a solvent solution with lower VOC could lead to longer run time of the cleaning devices, which may result in an increase of fugitive emissions. The commenter asks if EPA has certified that the rule does not have a Significant Economic Impact on a Substantial Number of Small Entities (SISNOSE) and if so, if that certification is based on studies that evaluated how effective or ineffective the reduced VOC solution will be for the purposes it is used for (i.e. parts cleaning).

Response: Initially, the comment is incorrect that the OTC model rule is a Federal rule. As explained by the OTC, the OTC model rules and programs are developed by the OTC (not EPA) and are not effective in an individual state until “taken by the individual states through their own rule adoption processes conforming to their state’s requirements².”

The technical issues raised by the commenter raise issues that appear to be unique to the commenter’s specific interest of how the rule will apply to its acquiring and operating a parts cleaner, are not relevant to EPA’s approval of Section 33.0 as being more stringent than solvent cleaning rules in the current Delaware SIP. EPA therefore does not consider these to be significant adverse comments on this action and consequently EPA will not be responding to the technical implementation questions in this rule. The commenter’s request for SISNOSE information is also not relevant because neither the promulgation of Section 33.0, nor the development of the 2012 Model Rule by the OTC was a Federal rule. Because the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, only applies to Federal rulemakings, neither the OTC or the state of Delaware were required to prepare a SISNOSE for either promulgation of Section 33.0 or the 2012 Model Rule.³ EPA does not need to prepare a SISNOSE for this rule, because the rule will not have a significant economic impact on a substantial number of small entities since this action merely approves state law as meeting Federal requirements and does not impose

² See otcair.org/OTC_process.asp

³ EPA’s approval of Section 33.0 as a revision to the SIP is a Federal rulemaking, however, a SIP approval merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, which does not trigger obligations under the Regulatory Flexibility Act.

additional requirements beyond those already imposed by state law.

The commenter, while not asserting that EPA should disapprove Section 33.0 as a SIP revision, does however assert that they “have been told that in some types of solvent solutions, too low of a VOC will lead to poor results regardless of how long the batch is run for. Even if extended operations of degreasers/parts cleaners can be equally effective, it does raise the question in my mind that businesses may end up generating more fugitive emissions by nature of the prolonged device operations (?).” The commenter does not offer any factual support for, or data to back up an increase of fugitive emissions or indicate a baseline from which the commenter believes a baseline should be measured. Additionally, the commenter does not indicate that the 40.87 tons/year emission reduction calculated by Delaware, and included in the docket for this rule, are incorrect or that Section 33.0 would be less stringent than the rule in the current Delaware SIP.⁴ Comments, that are no more than broad assertions that an agency “got it wrong,” do not provide a basis for EPA to change its decision. See, e.g., International Fabricare Institute v. E.P.A., 972 F.2d 384 (D.C. Cir. 1992). Therefore, this comment provides no basis for EPA to change its decision that Section 33.0 is an approvable revision to the Delaware SIP.⁵

IV. Final Action

EPA is approving, as a revision, the State of Delaware’s October 13, 2021, SIP submittal reducing VOC emissions from cold solvent cleaning operations.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation

⁴ See the Department Response to Comment 3 in Delaware’s Technical Response Memorandum for more information on Delaware’s emissions reduction calculation.

⁵ EPA nevertheless notes that if equipment cannot efficiently operate at the VOC content criteria included in DE’s SIP revision, a higher VOC content concentration for cleaning solution may be used with a VOC capture and control device that would control the VOC air emissions to no more than would be experienced if the cleaning solution were VOC compliant in absence of the capture and control device. See 7 DE Admin Code 1124 Section 33.3.7.3. Therefore, the operator has the option to use lower VOC content cleaning solutions or deploy appropriate control devices. There are several low-VOC solvent studies referenced in Delaware’s technical support document, which can be found in the docket for this rule. These studies identify low VOC solvent alternatives that performed effectively for various industries and were cost effective.

by reference of Delaware’s solvent cleaning and drying regulation, described in 7 DE Admin. Code 1124 Section 33.0. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

⁶ 62 FR 27968 (May 22, 1997).

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which pertains to the reduction of VOC emissions from cold solvent cleaning operations in Delaware, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the table in paragraph (c) is amended by revising the entry for “Section 33.0” to read as follows:

§ 52.420 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
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1124 Control of Volatile Organic Compound Emissions				
* * *	* * *	* * *	* * *	
Section 33.0	Solvent Metal Cleaning and Drying	08/11/2021	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] , [INSERT FEDERAL REGISTER CITATION]	
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